IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.798 OF 1989

The State of Maharashtra ...Appellant.
(Orig. Complainant)

V/s

Sakharam Dattu Zambare,
age 25 of Arjunwad, Tahsil
Shirol, District: Kolhapur. ...Respondent.
(Orig. Accused)

Mr. D.P. Adsule, APP for the Appellant - State.

Mr. S.R. Mithare i/b A.P. Mundargi for the respondent.

CORAM: V.M.KANADE,J.
DATE: 16th September, 2004

ORAL JUDGMENT:

1. Appellant - State has filed this appeal challenging the Judgment and Order dated 15/7/1989 passed by the Assistant Sessions Judge in Criminal Appeal No.74 of 1987 arising out of the Judgment and Order dated 19/9/1987 passed by the J.M.F.C., Jaysingpur in Criminal Case No.69 of 1986 in which the respondent - accused was charged under section 326 of the Indian Penal Code.

2. The incident in question had happened on 21/8/1986. The complainant and the accused used to quarrel with each other. The accused was younger brother of the complainant. There was some quarrel regarding the fuse of the electric motor being removed from the socket and the accused gave a blow with a

grubbing hoe on the back side rib of the complainant. He was taken to the Mission Hospital, Miraj and was admitted in the said Hospital. A complaint was recorded and the accused was charged under section 326 of the I.P.C.

3. The prosecution has examined in all six witnesses. The Trial Court convicted the accused vide its Judgment and Order dated 19/9/1987 under section 326 of I.P.C. and sentenced him to suffer R.I. for one year. However, against the said order respondent - accused preferred an appeal to the Sessions Court being Criminal Appeal No.74 of 1987 which was allowed by the Lower Appellate Court vide its Judgment and Order dated 15/7/1989. Appellant - State has, therefore, preferred this appeal against the said order of acquittal.

4. The Lower Appellate Court has drawn an adverse inference as a result of non-examination of some witnesses. The Lower Appellate Court has further observed that the name of Vatsala, the wife of the brother of the complainant was not found in the F.I.R. as one of the eye witnesses. However, she was examined as an eye witness whereas the other eye witnesses were not examined. The Lower Appellate

Court came to the conclusion that the prosecution has failed to positively and convincingly prove that the accused voluntarily caused grievous hurt to the complainant by means of grubbing instrument which is an instrument of cutting.

5. The defence of the respondent - accused was that the injury was caused as a result of the complainant's bullock who had hit the complainant with his horns. The Lower Appellate Court has taken into consideration the various circumstances, especially the medical certificate and absence of sending the weapon to the Chemical Analyser as also recovery of the weapon.

6. I do not see any reason to interfere with the said view taken by the Lower Appellate Court which is a reasonable view and the findings which are given by the Lower Appellate Court cannot be said to be perverse. Appeal is, therefore, dismissed.

V.M. KANADE, J.